

3/12/07

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## **FIRST AMENDMENT TO PRESERVATION RESTRICTION AGREEMENT**

This First Amendment to Preservation Restriction Agreement ("First Amendment") is made this 23rd day of January, 2007 by and between **IRON WORK FARM IN ACTON, INC.**, a Massachusetts nonprofit corporation maintaining its place of business at 128 Main Street, P.O. Box 1111, Acton, Massachusetts 01720 ("Grantor") and **THE TOWN OF ACTON**, a municipality of the Commonwealth of Massachusetts acting by and through its Board of Selectmen ("Town").

WHEREAS, Grantor is owner in fee simple of a certain parcel of real property located at 128 Main Street in the Town of Acton, Middlesex County, Massachusetts (hereinafter "the Premises"), and described in Exhibit A attached to the Preservation Restriction Agreement by and between the parties dated November 28, 2005 and recorded with the Middlesex South District Registry of Deeds in Book 46639, Page 282 (the "Agreement");

WHEREAS, the parties entered into the Agreement in order to express their respective rights and obligations in connection with the Town's appropriation of funds under the Community Preservation Act, G.L. c. 44B, §§ 1-17, for the restoration of chimneys within the historic Jones Tavern (the "Tavern") located on the Premises;

WHEREAS, the Town has subsequently appropriated additional funds under the Act to replace the Tavern's roof, gutter and downspouts, and the parties desire to amend the original Agreement to reflect this additional appropriation;

NOW THEREFORE, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and Town agree on behalf of themselves, and their respective successors and assigns as follows:

1. **Section 8.** Section 8 of the Agreement is hereby amended by striking the second paragraph in its entirety and replacing it with the following:

If, after reviewing the report and assessing the availability of the insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Town agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, Grantor may with prior written consent of Town, alter, demolish, remove or raze the Building and/or construct new improvements on the Premises. In such event, Grantor and Town may agree to extinguish this Restriction in accordance with the laws of the Commonwealth of Massachusetts, and upon such extinguishment, the Grantor shall repay the full amount of: (a) the grant made by the Town under the Community Preservation Act in 2005 for the restoration of the Building's chimneys, together with interest at the rate of 7% per annum accruing as of the date of the Agreement, subject to a credit for the depreciated value of the chimneys assuming a useful life of forty (40) years from the date of the Agreement; and (b) the

grant made by the Town under the Community Preservation Act in 2007 for the replacement of the Building's roof, gutter and downspouts, together with interest at the rate of 7% per annum accruing as of the date of this First Amendment, subject to a credit for the depreciated value of the roof, gutter and downspouts assuming a useful life of forty (40) years from the date of this First Amendment.

2. **Section 10.** The Town's attorney's address is hereby changed to the following:

Stephen D. Anderson, Esq.  
Anderson & Kreiger LLP  
One Canal Park, Suite 200  
Cambridge, MA 02141

3. **Ratification.** All other terms and conditions of the Agreement, as amended, are hereby ratified and confirmed.

4. **MHC Approval.** The Grantor shall fully cooperate with the Town in its efforts to obtain any government approvals necessary for the perpetual enforcement of this First Amendment, including but not limited to the approval of the Commissioner of the Massachusetts Historic Commission ("MHC") as provided under G.L. c. 184, § 32. In the event that the First Amendment in its current form is not acceptable to the MHC for purposes of said approval, the Grantor shall cooperate with the Town in making any and all technical (non-substantive) modifications that are necessary to obtain said approval, and hereby appoints the Town its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. This First Amendment shall also be deemed an "other restriction held by any governmental body" as that term is used under G.L. c. 184, § 26 notwithstanding MHC approval or disapproval of this First Amendment.

5. **Title; Authority.** The Grantor hereby represents, covenants and warrants as follows:

- (a) The Grantor (i) is a non-profit corporation duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this First Amendment.
- (b) The execution and performance of this First Amendment by the Grantor (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Grantor is a party or by which it or the Premises is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Grantor will, at the time of execution and delivery of this First Amendment,

have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance, except the Agreement. The Grantor represents and warrants that it has obtained the consent of all existing mortgagees of the Premises to the execution and recording of this First Amendment and to the terms and conditions hereof, and the subordination of all existing mortgages to this First Amendment, and that all such consents and subordinations are attached hereto and made a part hereof.

6. **Authority.** The parties agree that this First Amendment conforms to and satisfies the provisions of Section 17 of the Agreement relating the amendments.

7. **Counterparts.** This First Amendment may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor and Town have set their respective hands this 23rd day of January 23, 2007.

GRANTOR:  
THE IRON WORK FARM IN ACTON, INC.

BY: Lawrence Sorli  
Lawrence Sorli, President

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex ss. 2/26, 2007

On this 26 day of Feb, 2007, before me, the undersigned notary public, personally appeared Lawrence Sorli, proved to me through satisfactory evidence of identification, which were License, to be the person whose names are signed on the preceding document, as President of The Iron Work Farm in Acton, Inc., and acknowledged to me that he signed it voluntarily for its stated purpose.

Christine M. Joyce

Notary Public

Print Name: Christine M. Joyce

My Commission Expires: Sept 26, 2008

TOWN:

TOWN OF ACTON, MASSACHUSETTS,

By its Board of Selectmen,

\_\_\_\_\_  
Walter M. Foster, Chairman

\_\_\_\_\_  
Andrew Magee, Vice Chairman

\_\_\_\_\_  
Lauren Rosenzweig

\_\_\_\_\_  
F. Doré Hunter

\_\_\_\_\_  
Peter K. Ashton

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

\_\_\_\_\_, 2007

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned notary public, personally appeared the foregoing Chairman and members of the Acton Board of Selectmen, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the persons whose names are signed on the preceding document, as Chairman and members of the Board of Selectmen for the Town of Acton, and acknowledged to me that each signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

Print Name:

My Commission Expires: